

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEO GUZMAN

Plaintiff,

vs.

NUCO2 LLC and NUCO2
MANAGEMENT LLC,

Defendants.

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Civil Action No. 1:21-cv-166

DEFENDANTS' NOTICE OF REMOVAL

Under 28 U.S.C. §§ 1332, 1441, and 1446, Defendants NUCO2 LLC and NUCO2 Management LLC (“NUCO2” or “Defendants”) file this Notice of Removal, giving notice that they are removing this civil action to the United States District Court for the Western District of Texas, El Paso Division, based on diversity jurisdiction. In support of this Notice of Removal, Defendants show:

I.
PROCEDURAL OVERVIEW

1. On January 15, 2021, Plaintiff Leo Guzman filed this civil action, Cause No. 2021DCV0176, in the 327th Judicial District Court of El Paso County, Texas, styled *Leo Guzman vs. NuCO2, LLC and NuCO2 Management, LLC* (the “State Court Action”). *See* Ex. B-2. Plaintiff demanded a jury trial. *See id.*

2. Defendants NuCO2 LLC and NuCO2 Management LLC’s Notice of Removal is accompanied by copies of the following materials:

- Exhibit A: State Court Action Docket Sheet;
- Exhibit B: Index of Filings in State Court Action;
 - Exhibit B-1: Civil Cover Sheet and Supplement to Civil Cover Sheet;

- Exhibit B-2: Plaintiff's Original Petition;
- Exhibit B-3: Citations to NuCO2 LLC and NuCO2 Management LLC;
- Exhibit B-4: Defendant's Original Answer to Plaintiff's Original Petition;
- Exhibit B-5: Notice of Removal to State Court.
- Exhibit C: Declaration of Anthony Pepper.
- Exhibit D: Lexis Public Record Search for Leo Guzman

3. On January 22, 2021, Defendants NuCO2 LLC and NuCO2 Management LLC were served with a copy of Plaintiff's Original Petition. *See* Ex. B-3.

4. On February 12, 2021, NuCO2 LLC and NuCO2 Management LLC timely filed their Original Answer to Plaintiff's Original Petition in the State Court Action. *See* Ex. B-4.

5. On February 19, 2021, NuCO2 LLC and NuCO2 Management LLC timely filed their Notice of Removal to this Court. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because it is being filed within thirty days after Defendants NuCO2 LLC and NuCO2 Management LLC first received a copy of Plaintiff's Original Petition.

6. Removal is proper to this Federal District Court and division because it embraces El Paso County, Texas, the place in which the State Court Action is pending. *See* 28 U.S.C. § 1441(d).

7. As required by 28 U.S.C. § 1446(d), Defendants will provide prompt written notice of the filing of this Notice of Removal to all adverse parties and will file a copy of it with the Clerk of the 327th Judicial District Court of El Paso County.

II.

GROUND FOR REMOVAL— DIVERSITY JURISDICTION

8. This Court has subject matter jurisdiction in this case based upon diversity jurisdiction. 28 U.S.C. § 1332. Diversity jurisdiction exists in a civil matter when the amount in

controversy exceeds \$75,000.00, exclusive of interest and costs, and the dispute is between citizens of different states. Both requirements are met in this case.

A. The Amount in Controversy Exceeds \$75,000.00.

9. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiff states in his Petition that he seeks damages in excess of \$1,000,000, and other non-wage damages such as equitable relief. *See* Exhibit B-2, p. 5. Specifically, Plaintiff seeks damages in the form of past and future lost wages and benefits, compensatory damages, including emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other noneconomic losses. *Id.* The amount in controversy, therefore, exceeds \$75,000.00, and the first removal requirement under 28 U.S.C. § 1332(a) is satisfied.

B. Complete Diversity of Citizenship Exists.

10. Defendants have satisfied the second requirement for removal under 42 U.S.C. § 1332(a) because complete diversity of citizenship exists between Plaintiff and Defendants. At the time of filing and removal, Plaintiff was and is a citizen of the State of Texas, currently domiciled at 3220 Amy Donovan Plz., Apt. 10115, Austin, Texas 78758. *See* Ex. D. Plaintiff has lived in the State of Texas since at least 2006, has held a valid Texas drivers' license since 2006, and is currently registered as an active voter in Texas. *See id*; *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011) ("Evidence of a person's place of residence [] is prima facie proof of his domicile.").

11. Defendant NuCO2 LLC is not, and was not at the time this action commenced, a citizen of the State of Texas. Defendant NuCO2 LLC is a limited liability company organized and existing under the laws of the State of Delaware. *See* Ex. C, Declaration ¶ 4. NuCO2 LLC's sole member is a foreign for-profit corporation incorporated in and existing under the laws of Delaware, with its headquarters located in Florida. Thus, because Plaintiff is a citizen of Texas and Defendant

is a citizen of Delaware, the parties' citizenship is diverse within the meaning of 28 U.S.C. § 1332.

12. Defendant NuCO2 Management LLC likewise is not, and was not at the time this action commenced, a citizen of the State of Texas. Defendant NcCO2 Management LLC is a limited liability company organized and existing under the laws of the State of Delaware. *See* Ex. C, Declaration ¶ 5. NuCO2 Management LLC's sole member is a foreign for-profit corporation incorporated in and existing under the laws of Delaware, with its headquarters located in Florida. Thus, because Plaintiff is a citizen of Texas and Defendant is a citizen of Delaware, the parties' citizenship is diverse within the meaning of 28 U.S.C. § 1332.

WHEREFORE, Defendants NuCO2 LLC and NuCO2 Management LLC respectfully request this action be removed from the County Court of El Paso County, Texas, to the United States District Court for the Western District of Texas, El Paso Division, and for all such other and further relief to which it may be justly entitled.

Dated February 19, 2021

Respectfully submitted,

/s/ Shawn Oller

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**ATTORNEYS FOR DEFENDANTS
NUCO2 LLC AND NUCO2
MANAGEMENT LLC**

CERTIFICATE OF SERVICE

I certify that on February 19, 2021, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Western District of Texas, El Paso Division, using the Electronic Case Filing system of the Court. I hereby certify that I have served all counsel of record as indicated below:

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